



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 4286860

Date: FEB. 18, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an electrical and computer engineering researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a graduate student and research assistant in the [redacted] [redacted] at [redacted] University. The record includes a letter of support from [redacted] professor and chair of Electrical and Computer Engineering at [redacted] University, stating that the Petitioner has served "as a doctoral researcher in [redacted] and is completing his degree under my advisement."⁵ On appeal, the Petitioner indicates that he is currently working as a postdoctoral researcher at [redacted] University and [redacted] University. He provides letters from both universities confirming his appointment as a postdoctoral research associate at [redacted] University and as a visiting research collaborator at [redacted] University.⁶

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his research relating to [redacted] [redacted] [redacted] He explained that his proposed work is aimed at designing efficient algorithms for future wireless networks, evaluating end-user behavior and developing prospect pricing in wireless data networks, and optimizing resource allocation for smart cities. The Petitioner also stated that he plans to undertake research involving development of a framework for managing online distractions encountered in learning.

The record supports the Director's determination that the Petitioner's proposed endeavor has substantial merit and national importance. For example, the Petitioner provided documentation indicating that the benefit of his proposed research has broader implications, as the results are disseminated to others in the field through engineering journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his [redacted] and

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Master of Science degree in Electrical and Computer Engineering from [redacted] University (October 2017).

⁵ After filing the petition, the Petitioner received his Ph.D. in Electrical and Computer Engineering from [redacted] University (October 2018).

⁶ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his current and prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

wireless communications research, we agree with the Director's determination that the Petitioner meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, academic credentials, peer review activities, published articles, and conference presentations. He also offered evidence of articles that cited to his published work, and reference letters discussing his graduate work under the guidance of [REDACTED] at [REDACTED] University.

The Petitioner contends on appeal that his academic qualifications⁷, work experience, research articles, citation evidence⁸, and grant funding for his research indicate that he is well positioned to advance his proposed endeavor. For the reasons discussed below, the evidence is insufficient to demonstrate that he is well positioned to advance his proposed research under *Dhanasar*'s second prong.

In letters supporting the petition, the Petitioner's references discussed his graduate research projects.⁹ For example, [REDACTED] asserted that "[o]ne of the [Petitioner's] best-known and widely-influential research projects involved the use of [REDACTED] [REDACTED] [REDACTED] explained that the Petitioner "analyzed [REDACTED]s in a cooperative network composed of [REDACTED] through an [REDACTED] model that he developed" and "demonstrated how both sets of users behaved in this type of network." He also noted that the Petitioner's model showed "how [REDACTED] [REDACTED] evolve according to specific user cooperation levels under varying channel conditions" and that their work was published in "proceedings of the IEEE 2016 Annual Conference on Information Science and Systems." The record includes a January 2019 citation report from Google Scholar indicating that their research article reporting these findings has received eight citations since its publication in 2016.¹⁰

⁷ As previously noted, the Petitioner received his Ph.D. in Electrical and Computer Engineering after the petition's filing date. Eligibility, however, must be established at the time of filing. See 8 C.F.R. § 103.2(b)(1).

⁸ For instance, the Petitioner provided a Google Scholar citation report indicating that as of January 2019, his and [REDACTED]s article in *IEEE [Institute of Electrical and Electronics Engineers] Journal on Selected Areas in Communications* had received 37 citations since its publication in 2017. The Petitioner argues that he has a stronger citation record than Dr. Dhanasar, the petitioner in our *Dhanasar* precedent decision. While we listed Dr. Dhanasar's "publications and other published materials that cite his work" among the documents he presented, our determination that he was well positioned under the second prong was not based on his citation record. Rather, in our precedent decision we found "[t]he petitioner's education, experience, and expertise in his field, the significance of his role in research projects, as well as the sustained interest of and funding from government entities such as NASA and AFRL, position him well to continue to advance his proposed endeavor of hypersonic technology research." *Id.* at 893. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and citations are merely one factor among many that may contribute to such a finding.

⁹ We discuss only a sampling of these letters, but have reviewed and considered each one.

¹⁰ Half of these citations reflect self-citation by the Petitioner and his coauthors, [REDACTED] and [REDACTED]. The Petitioner provided 2017 and 2018 data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for various research fields, including "Computer Science" and "Engineering." This documentation from Clarivate Analytics states that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the

Another coauthor of the Petitioner, [redacted] an enterprise account architect with [redacted] [redacted] stated: “In our work together at [redacted] [the Petitioner] created a business model that incentivizes the various [redacted] components to take part in the [redacted] [redacted]. . . [The Petitioner] discovered that [redacted] components were willing to [redacted] above a specific popularity threshold, and also realized [redacted] approaches.” [redacted] indicated that the Petitioner’s method “improves the delivery of streaming content by accounting for both [redacted] [redacted] together,” but did not provide specific examples of how the Petitioner’s business model has been implemented, utilized, or applauded by others in the field.

In addition, [redacted] professor at the [redacted] University of [redacted] mentioned the Petitioner’s research relating to joint [redacted] strategies in [redacted] and asserted that the Petitioner’s work “has had a marked impact on the work of numerous other researchers.” For instance, [redacted] contended that “[i]n their paper ‘[redacted] [redacted] et al. relied on [the Petitioner’s] findings to arrive at a solution for the [redacted] in content provider networks.’”¹¹ [redacted] further claimed that the aforementioned authors used the Petitioner’s “[redacted] and [redacted] model,” but a review of their paper does not support this conclusion. In the “Related Works” section of their paper, the authors cited to the Petitioner’s use of “[redacted] to model content popularity and a [redacted] approach to determine [redacted] strategies in [redacted] [redacted]” but their paper does not single out the Petitioner’s work as particularly important or further discuss implementation of his [redacted] model or [redacted] approach. Rather, his findings were discussed only in the “Related Works” section as background information to [redacted] et al.’s paper.

Regarding the Petitioner’s research relating to [redacted] in [redacted] sensor networks, [redacted] professor of electrical and computer engineering at [redacted] University, asserted that the Petitioner developed “a [redacted] framework that was able to combat [redacted] issues and [redacted] delays. This demonstrated that parallelism was able to improve feasibility in [redacted] implementation.” Furthermore, [redacted] professor of electrical and computer engineering at University of [redacted] described the Petitioner’s work involving utilization of [redacted] sensor networks as “innovative and influential.” [redacted] also noted that he cited the Petitioner’s findings in his published work. The aforementioned Google Scholar report reflects that the Petitioner’s article in *IEEE Journal of Oceanic Engineering*, entitled “[redacted] [redacted]” has been cited 16 times since 2014. The Petitioner, however, has not demonstrated that this number of citations constitutes a record of success or a level of interest in his work from relevant parties sufficient to meet *Dhanasar*’s second prong.

With regard to his peer review activities, the Petitioner provided evidence indicating that he reviewed articles for *Ad Hoc Networks*, *Computer Networks*, *IEEE Communications Letters*, *Transactions on Information Forensics and Security*, *IEEE Transactions on Information Theory*, *Transactions on*

distribution.” Regardless, the Petitioner has not demonstrated that the number of independent citations received by his article in proceedings of the IEEE 2016 Annual Conference on Information Science and Systems reflects a level of interest in his work from relevant parties sufficient to meet this prong.

¹¹ This paper similarly referenced numerous other authors’ findings as background information.

Network Science and Engineering, *IEEE Transactions on Communications*, *IEEE International Symposium on Information Theory*, *IEEE Journal on Selected Areas in Communications*, *Conference on Communication Systems and Networks*, and *IEEE Wireless Communications Letters*. The Petitioner has not shown that his participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor.

As further evidence under *Dhanasar*'s second prong, the Petitioner provided email communications he received from a visiting scholar he met at the Globecom 2015 conference and from a student pursuing a Master of Technology degree in communication systems at National Institute of Technology, [REDACTED] in India. The first individual asked the Petitioner to send him papers relating to the "issue of [REDACTED] coordination" and the second one requested help with calculating "the [REDACTED] factor required for the calculation of the [REDACTED] coefficients." The Petitioner has not demonstrated that these two requests signify a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong.

The Petitioner also contends that he has received funding for his research from government sources. He presented his published articles which indicate that his work at [REDACTED] University was supported by organizations such as the U.S. National Science Foundation (NSF), National Natural Science Foundation of China, and Office of Naval Research. In addition, the Petitioner submitted an email from the NSF asking him to provide "demographic information" relating to his participation in an NSF-supported project. This email states: "You have been identified by the Principal Investigator/co-Principal Investigator(s) as contributing to the following NSF-supported project. . . . PI/co-PI(s): [REDACTED] [REDACTED]". The aforementioned documentation does not identify the Petitioner as Principal Investigator or co-Principal Investigator. Rather, it appears his professors at [REDACTED] University (such as [REDACTED] and [REDACTED]) filled those roles and were thus primarily responsible for securing the funding for his research projects. In *Dhanasar*, the record established that the petitioner "initiated" or was "the primary award contact on several funded grant proposals" and that he was "the only listed researcher on many of the grants." *Id.* at 893, n.11. Here, the record does not show that the Petitioner (rather than his professors) was mainly responsible for obtaining governmental funding for his research projects.

The evidence indicates that the Petitioner has conducted, published, and presented research during his graduate studies, but he has not shown that this work renders him well positioned to advance his proposed [REDACTED] research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original graduate research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not shown that his published and presented work has served as an impetus for progress in the electrical and computer engineering field or that it has generated substantial positive discourse in the wireless communications industry. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in researching [REDACTED] networks. As the record is

insufficient to show that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his education, research experience and accomplishments, the importance of his field, and the impracticality of labor certification. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.